



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

April 27, 2007

Parties and Others Identified
on the Attached Service List

Re: Informational Status Conference to Discuss Idaho Dairy Association
and Water Mitigation Coalition Mitigation Agreements

Dear Parties and Others:

On April 13, 2007, the Department received mitigation agreements for members of the Idaho Dairy Association (IDA) and the Water Mitigation Coalition (WMC).

The applicability of the IDA and WMC agreements to mitigation owed by members of the Idaho Ground Water Appropriators to members of the Surface Water Coalition for 2007 was discussed in subsequent meetings to which the parties and other participants were present.

I plan to hold an informational status conference to allow for specific discussion of the IDA and WMC agreements and their implementation for 2007. The long range application of the agreements will be addressed at a later time.

The informational status conference will begin at 9:00 a.m. at the Department on May 2, 2007. Attorneys and experts for the parties to the IDA and WMC agreements are requested to be present to discuss the agreements. Telephonic participation will be available by calling the following number: (713) 576-2027; and entering the following participant code: 275568.

A review of the IDA and WMC agreements by the Department has raised the following questions:

1. IDA Agreement

- a. Please provide Exhibit B (Depletion Calculation) and Exhibit C (Idaho Dairymen's Association Mitigating Members and Their Water Rights) to IDWR.

- b. For Exhibit B, please provide references, flow meter readings, or any other data to support the depletion calculations to IDWR.
- c. Similar to the previous question, please provide information to IDWR to support the computation of 29.1 gallons of water per day as the depletion for each cow.
- d. Does the consumptive volume of 29.1 gallons of water per day per animal include the volume of wash and flush water required per lactating cow? If the volume of wash and flush water is included, what kind of washing system is assumed for the calculation?
- e. Is the volume of water consumed by dry cows, replacement cows, and young heifers included in the 29.1 gallons of water per day per animal?
- f. Define what the term "2007 Study Animal #" means? *See* pages 1-8, column 2 of "Enhanced ESPAM Version 1.1 Steady State Impact Fraction by Reach." For example, on page 8 of the above-mentioned spreadsheet, there is a total of 280,502 cows. Does this total refer to the number of mature dairy cows (dry and lactating), only lactating cows, other types of cows, or a combination of all types of cows?
- g. If this depletion estimate is determined to be low, how will the difference be addressed?

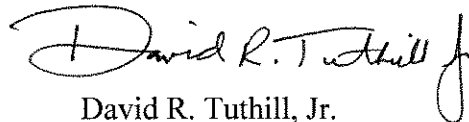
2. WMC Agreement

- a. How was the figure of 10,000 acre-feet per annum (afa) of mitigation obtained? The "Estimated Processor Diversion Worksheet for Transient ESPAM Analysis" shows a "Total Modeled Consumptive Volume" of 30,855.10 afa.
- b. The list of water rights associated with the Agreement includes some water rights for irrigation purposes. Is there an intent to provide mitigation water for irrigation purposes? How were the consumptive use fractions determined for food processing and irrigation? Knowing that JRS-Howe Farms' water rights are for irrigation, what types of irrigation equipment are used and what system efficiencies were used in the determination of the consumptive fraction? What period of time was used for these calculations (i.e. 1990–2000)? Is this an average, below, or above normal weather period?

- c. In the submitted documentation, it has been determined that consumptive fraction numbers and associated water rights are associated with irrigation and industrial use. What is the basis for using .80 as the consumptive fraction for commercial/industrial and .68 for irrigation?
- d. Who determines when and where the mitigation water is made available? Page 1, ¶ D of the Water Rental Agreement indicates that the Senior Water Coalition is in control. Page 1-2, ¶ 2 states that the diversion will be mutually determined by the Senior Water Coalition and MID.
- e. The X-axis on the last chart attached to the Agreement, "Estimated Steady State Reach Gains from Specific Priority Curtailment," starts at 1960; the inserted table includes 1904. If the intent of the agreement is to only mitigate for depletions junior to 1960, why is 1904 shown if the mitigation should not include this depletion volume?

Please be prepared to answer these and any other questions that the Department or other parties or participants may have.

Sincerely,

A handwritten signature in black ink, reading "David R. Tuthill Jr." with a stylized flourish at the end.

David R. Tuthill, Jr.
Director

Attached Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 32
GOODING ID 83330
(208) 934-8873
alo@cableone.net

(x) U.S Mail, Postage Prepaid
() Facsimile
(x) E-mail

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318-0248
(208) 878-2548
wkf@pmt.org

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ROGER D. LING
LING ROBINSON
PO BOX 396
RUPERT ID 83350-0396
(208) 436-6804
lnrlaw@pmt.org

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOHN ROSHOLT
TRAVIS THOMPSON
BARKER ROSHOLT
113 MAIN AVE WEST STE 303
TWIN FALLS ID 83301-6167
(208) 735-2444
jar@idahowaters.com
tlr@idahowaters.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOHN SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

RANDY BUDGE
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

DANIEL V. STEENSON
RINGERT CLARK
PO BOX 2773
BOISE ID 83701
(208) 342-4591
dvs@ringertclark.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

J. DEE MAY
MAY SUDWEEKS & BROWNING
PO BOX 1846
TWIN FALLS ID 83303
(208) 733-7180
jdmay@tflaw.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

SCOTT CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701
(208) 385-5384
slc@moffatt.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

KATHLEEN CARR
U.S. DEPT INTERIOR
960 BROADWAY STE 400
BOISE ID 83706
(208) 334-1378

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

MATT HOWARD
US BUREAU OF RECLAMATION
1150 N CURTIS ROAD
BOISE ID 83706-1234
(208) 378-5003
mhoward@pn.usbr.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

LYLE SWANK
IDWR
900 N SKYLINE DR
IDAHO FALLS ID 83402-6105
(208) 525-7177
lyle.swank@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOSEPHINE BEEMAN
BEEMAN & ASSOC.
409 W JEFFERSON
BOISE ID 83702
(208) 331-0954
jo.beeman@beemanlaw.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

MICHAEL GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

TERRY UHLING
JR SIMPLOT CO
999 MAIN STREET
BOISE ID 83702
tuhling@simplot.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

SARAH KLAHN
WILLIAM A HILLHOUSE II
AMY W BEATIE
WHITE JANKOWSKI
511 16TH ST STE 500
DENVER CO 80202
sarahk@white-jankowski.com
billh@white-jankowski.com
amyb@white-jankowski.com

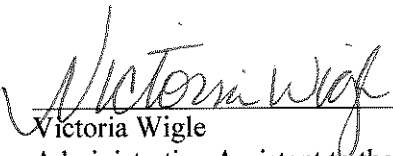
(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JAMES TUCKER
IDAHO POWER CO
1221 W IDAHO ST
BOISE ID 83702
jamestucker@idahopower.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JAMES LOCHHEAD
ADAM DEVOE
BROWNSTEIN HYATT
410 17TH ST 22ND FLOOR
DENVER CO 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources